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No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED FOR REVIEW

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to search a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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OPINION BELOW

The opinion of the Wyoming Supreme Court is reported at 956 P.2d 363 (Wyo. 1998) and is reproduced in the appendix to the petition for a writ of certiorari. (Pet. App. 1-25).

JURISDICTION

The judgment of the Wyoming Supreme Court was entered on April 3, 1998. (Pet. App. 1). Its order denying a petition for rehearing was entered April 28, 1998. (Pet. App. 26). The petition for a writ of certiorari was filed on July 27, 1998 and was granted on September 29, 1998. This Court's jurisdiction rests upon 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

In the early morning hours of July 23, 1995, Officer Delane Baldwin of the Wyoming Highway Patrol conducted a traffic stop on a vehicle traveling east on Interstate 25 in Natrona County. Officer Baldwin observed that the car was speeding and had a burned out brake light. After stopping the car, a 1977 Cadillac, Officer Baldwin contacted the driver, David Young. There were two female passengers in the car, one of whom was the respondent. All the occupants were on the front seat, with respondent located at the end next to the passenger door. (Jt. App. 134-37, 139-40, 162).

Officer Baldwin, now joined by other officers, asked Mr. Young for his driver's license, registration and insurance certificate. At this point, the officer noticed a hypodermic syringe plainly visible in Mr. Young's left front shirt pocket. Officer Baldwin informed Mr. Young that he had seen the syringe and was going to retrieve his gloves from the patrol car. Upon his return, he instructed Mr. Young to get out and place the syringe on the hood of the car, which he did. In response to a question, Mr. Young stated that he used the syringe to take drugs. (Jt. App. 137-40).

Two fellow officers then removed the passengers from the vehicle and patted them down for weapons. Respondent left her purse on the back seat of the car when she exited from the front seat; she was not told to leave it there. She verbally identified herself as "Sandra James" and claimed she had no identification. (Jt. App. 140-43).

Officer Baldwin then began a search of the passenger compartment for drugs, based on the syringe and Mr. Young's statement that he used the syringe to take drugs. The officer found a closed lady's cloth purse on the middle of the back seat and removed a wallet from it. The wallet contained respondent's photo driver's license, identifying her as Sandra K. Houghton. When Officer Baldwin asked her why she gave a false name, Ms. Houghton replied it was "in case things went bad." (Jt. App. 141-45).

Officer Baldwin then removed a brown bag from the cloth purse. Opening the bag, the officer found a syringe containing approximately 60 cc's of liquid that proved to be methamphetamine. Looking further, Officer Baldwin found more syringes, razor blades and other drug paraphernalia inside the brown bag. The officer then looked at respondent's arms, finding fresh needle track marks. At that point, Officer Baldwin arrested respondent. (Jt. App. 147-50, 158-59, 180-83).

Searching further in the purse, the officer found a smaller black bag containing numerous drug-related items, including syringes, spoons and razor blades. (Jt. App. 150-51). In all, three items inside the purse (two syringes and a vial) were found to contain methamphetamine or methamphetamine residue. (Jt. App. 181-83). During the search, respondent admitted the purse was hers but selectively denied ownership of some of the items pulled from the purse. (Jt. App. 19, 166-69). The only person arrested or charged in this incident was the respondent. (Jt. App. 169). The driver was not arrested because the syringe in his pocket contained "little or very little substance" and the officer believed the

state crime lab would prefer not to test it under these circumstances. (Jt. App. 173-74).

Ms. Houghton was charged in state district court with possession of methamphetamine in a liquid amount greater than three-tenths of a gram, a felony. Wyo. Stat. § 35-7-1031(c)(iii). Prior to trial, she filed a motion to suppress all evidence seized in the search of the car, claiming, *inter alia*, that the search violated the Fourth and Fourteenth Amendments. A hearing was held on the motion. Subsequently, a decision letter and order were issued denying the motion. The district judge ruled that when an officer has generalized probable cause to believe contraband is somewhere in a car, he may search the car and containers within the car, including a passenger's purse. (Jt. App. 3-4, 12-13, 14-26, 27-28, 79-80). Evidence of Ms. Houghton's drug possession was duly admitted at trial over the objection of defense counsel. (Jt. App. 145-46). Respondent was convicted by the jury as charged. (Jt. App. 269-70, 286).

Respondent appealed her conviction to the Wyoming Supreme Court,[1] claiming error in the denial of her motion to suppress evidence seized in the search of the car.[2] Three other issues were raised on appeal but not

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[1] There is no intermediate court of appeals in Wyoming for review of cases originating in the state district courts.

[2] Although respondent's claim of error in the trial court and Wyoming Supreme Court relied on both the Fourth Amendment and its state constitutional counterpart, Wyo. Const. art. 1, § 4, she failed to adequately develop her state constitutional argument on appeal as required by *Gronski v. State*, 910 P.2d 561, 565-66 (Wyo. 1996). Thus, the Wyoming

considered, the court deeming the search and seizure issue to be dispositive. (Pet. App. 2). Respondent conceded on appeal there was probable cause to search the car for drugs but maintained that in the absence of probable cause specific to her or her purse, the search violated her reasonable expectation of privacy in her personal belongings. (Pet. App. 6). The Wyoming Supreme Court framed the issue to be "whether the personal belongings of a passenger may be searched under the 'automobile exception' when probable cause exists to search the automobile, but there is no probable cause to believe the passenger is involved in criminal activity." (Pet. App. 5-6).

The court's analysis began with this Court's pronouncements on the scope of a warrantless search based on probable cause, recognizing that " '[t]he scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause.' " *United States v. Ross*, 456 U.S. 798, 823 (1982). The court further acknowledged that, according to *Ross*, 456 U.S. at 821, " '[a] warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search.' " (Pet. App. 7).

While seeming to accept the proposition that the scope of a warrantless search based on probable cause is the same as the scope of a search pursuant to a warrant, and that the officer here had probable cause to search the

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Supreme Court considered the issue solely under Fourth Amendment standards. (Pet. App. 6, n. 2).

car generally for contraband that was capable of being concealed in Ms. Houghton's purse, the court identified the "problem" to be that there was no specific probable cause to believe the purse contained contraband. At this point, the court declared:

> Therefore, the question is, if a warrant had issued on the basis that *Young* [the driver] held drugs in his car, whether the search of the personal effects of a *passenger or guest* would be within the scope of the warrant. (emphasis in original.)

(Pet. App. 8).

The court's use of the word "guest" in the passage above to describe Ms. Houghton's status was not accidental, for on this single word the court's analysis shifted from car searches to searches of the person and personal effects of *guests on fixed premises*. After noting the holding in *Ybarra v. Illinois*, 444 U.S. 85 (1979) (warrant to search premises of a tavern and the person of the bartender does not permit pat down search of a patron), the court discussed the three tests courts have employed for determining when a premises search warrant authorizes a search of a visitor's personal items. Weighing the relative merits of the three tests,[3] the court adopted the "notice" test for *both* searches of a visitor's personal effects under a premises search warrant,[4] and for the search of a motor vehicle

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[3] The three tests are the physical proximity test, the relationship test and the notice test. *See, generally*, 2 Wayne R. LaFave, *Search and Seizure*, § 4.10(b) (3rd ed. 1996).

[4] Petitioner is not challenging herein that part of the Wyoming Supreme Court's holding that applies to the search of a visitor's personal effects under a premises search warrant.

passenger's personal effects under the Fourth Amendment's automobile exception. (Pet. App. 15, 17).

Under the notice test, an officer may assume that all containers on the premises may be searched unless he knows or should know that a container belongs to someone not covered in the warrant. If he knows or should know the container belongs to a visitor, he may search it only if there is independent probable cause to do so, or if someone on the premises had an opportunity to conceal contraband in the container immediately prior to execution of the search warrant. *See State v. Thomas*, 818 S.W.2d 350, 359 (Tenn.Crim.App. 1991).

Applying the notice test to the facts of this case, the court concluded the search violated the Fourth Amendment:

> Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the opportunity to conceal the contraband within the personal effect to avoid detection. Here, the officers knew or should have known that the purse did not belong to the driver, but to one of the passengers. Since there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse, the search was unreasonable and in violation of the Fourth Amendment right to be free from such governmental intrusion.

(Pet. App. 21-22).

Two of the five Justices of the Wyoming Supreme Court dissented from this ruling. The State of Wyoming filed a timely petition for rehearing which was denied by the court on April 28, 1998, with the same two Justices dissenting from the denial of rehearing. (Pet. App. 22, 26).

SUMMARY OF THE ARGUMENT

The question presented in this case is whether police may search a passenger's personal belongings located inside a vehicle stopped for traffic violations when police have probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the passenger. The Wyoming Supreme Court held that in the absence of specific probable cause to believe the passenger is engaged in criminal activity, the passenger's personal belongings may not be searched. While this Court has not previously ruled on the precise question involved, the Court's pronouncements over the years concerning the automobile exception to the Fourth Amendment's warrant requirement have effectively answered the question in the affirmative.

I. Beginning with *Carroll v. United States*, 267 U.S. 132 (1925), and continuing through *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991), the Court has arrived at the "true rule" and the "one rule" for warrantless searches of vehicles based on probable cause: when officers have developed probable cause to conduct a general search of a lawfully stopped vehicle for contraband or evidence of a crime, they may

search every part of the vehicle and every container within it that may conceal the object of the search.

This rule is comprehensive and unequivocal. It applies equally to all containers. In terms of privacy, there is no distinction in this context between the vehicle and its contents. All the privacy interests involved yield to the authority of a search based on probable cause, to the same extent they would yield under a warrant's command. It follows ineluctably that probable cause to conduct a general search of a vehicle permits the opening of every container that could hold the object of the search, including a container belonging to a passenger for whom there is no individualized suspicion of criminal activity.

II. The rule announced by the Wyoming Supreme Court violates a basic precept of search and seizure doctrine. A warrant authorizing the search of a container, whether that container is a vehicle, a building or some other object, also authorizes the search of any smaller containers found inside it, without the need for a second warrant or additional probable cause specific to the smaller container. Because a warrant permits the search of the smaller containers found inside the larger one named in the warrant, and because this Court has declared the scope of a warrantless car search based on probable cause to be as broad as one authorized by a warrant, the officer's probable cause in this case to conduct a general search of the car authorized the search of the smaller container (the purse) found inside the car.

III. If the Wyoming Supreme Court's rule is left to stand, the personal belongings of "nonsuspect"

passengers will be outside the lawful scope of a search under the automobile exception. This will produce an unjustified disparity between the lawful scope of an automobile search and the scope of a search incident to the arrest of a vehicle occupant under *New York v. Belton*, 453 U.S. 454 (1981). When a vehicle occupant is subjected to a lawful custodial arrest, the passenger compartment of the vehicle may be searched as a contemporaneous incident of that arrest and any containers found therein may be opened and examined. Such a search is justified as being incident to the arrest of the occupant and is not based on probable cause. When the scope of a *Belton* search is considered in relation to the Wyoming Supreme Court's rule, a constitutional anomaly appears. A *Belton* search of a car interior, although not based on probable cause, may reach containers that are beyond the scope of a search based on probable cause. It is similarly incongruous to declare that *two* measures of probable cause are needed to search certain containers in an automobile – probable cause to search the car generally and probable cause to search the containers specifically.

IV. The decisions of this Court in the area of automobile searches have attempted to conserve the public's interest in effective law enforcement as well as the interests and rights of individual citizens. The ruling below substantially and unreasonably impedes law enforcement by requiring the officer in the field to make difficult and subtle judgments regarding the extent of his authority to search containers inside a vehicle. Even when the officer has established probable cause to search a car and its contents, he must nevertheless decide who among the occupants are criminal suspects in order to determine

which containers may be searched. He then must attempt to allocate containers between suspects and nonsuspects so that he does not search containers belonging to nonsuspects. Only then may he proceed with a search.

Requiring such complex and time consuming evaluations concerning the extent of an officer's authority to search will cause needless confusion and uncertainty in law enforcement and the lower courts. Such a system not only violates established Fourth Amendment jurisprudence, it ignores the proven need for a single, familiar standard, readily applicable by police in the field.

This Court should reverse the judgment of the Wyoming Supreme Court and hold that probable cause to search a vehicle under the automobile exception permits the search of all containers inside the vehicle that could hold the object of the search, including containers belonging to occupants who are not individually suspected of criminal activity.

ARGUMENT I

The Wyoming Supreme Court's decision is plainly contrary to this Court's "automobile exception" doctrine as developed in *Carroll, Ross* and *Acevedo*.

In holding that probable cause to search a car generally for contraband is insufficient to support a search of the personal belongings of a passenger for whom there is no individualized probable cause, the Wyoming Supreme Court has effectively repudiated this Court's "automobile

exception" to the Fourth Amendment's warrant requirement. In Wyoming, automobile searches in cases involving one or more passengers (an obviously common situation) will now be governed by rules heretofore applicable only to a constitutionally distinct situation – the search of personal belongings of visitors to fixed premises. The court erred by not recognizing the proper scope a warrantless search of an automobile after probable cause has been established to search the car generally for contraband.

In *Carroll v. United States*, 267 U.S. 132 (1925), this Court established the automobile exception to the general requirement that a warrant be obtained to conduct a search. *Carroll* involved the stop of an automobile by federal prohibition agents who had probable cause to believe the car was transporting liquor. After stopping the car the agents performed a warrantless search, finding liquor concealed inside the upholstery. The defendants contended that the search and seizure violated the Fourth Amendment.

Noting that the Fourth Amendment denounces only "unreasonable" searches and seizures, 267 U.S. at 147, the Court endeavored to determine the meaning of the phrase by reference to how it was understood at the time of adoption:

> The 4th Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.

Carroll, 267 U.S. at 149.

After reviewing various acts of Congress dealing with the collection of duties, enacted from the time of the first Congress onward, the Court determined that a clear distinction had always been made between the search of a dwelling house or other building and the search of a movable vessel. The search of a fixed structure required a warrant but the search of a movable vessel was in a different category:

> [T]he guaranty of freedom from unreasonable searches and seizures by the 4th Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Carroll, 267 U.S. at 153.

Having determined that a warrant was not invariably required to search an automobile, the Court concluded that a warrantless search of a vehicle is lawful if based upon probable cause:

> On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is

> subject to seizure and destruction, the search and seizure are valid.

Carroll, 267 U.S. at 149.

Carroll established the constitutional standard for warrantless automobile searches based on probable cause to believe contraband is located somewhere inside a lawfully stopped vehicle. In later cases, however, distinctions were made between circumstances in which officers had probable cause to search a vehicle generally and those in which officers had probable cause to search only a particular container seized from a vehicle. In the latter instance, where the probable cause extends only to the container and not the entire vehicle, it was held that the *Carroll* doctrine did not apply and a warrant must be obtained to search the container.

In *United States v. Chadwick*, 433 U.S. 1 (1977), officers had probable cause to believe a footlocker being shipped by train contained marijuana. When the defendants received the footlocker in Boston, they loaded it into Chadwick's car. Officers arrested Chadwick and his companions before they could leave and performed a warrantless search of the footlocker at a secure location. The government contended that the search of movable luggage was analogous to the search of a car under *Carroll*, making a warrant unnecessary. This Court rejected the argument, ruling that a person's expectation of privacy in personal luggage is greater than in an automobile. 433 U.S. at 13.

Shortly afterward, in *Arkansas v. Sanders*, 442 U.S. 753 (1979), the Court had a situation similar to *Chadwick*. Police had probable cause to believe a suitcase contained

marijuana. They observed Sanders arrive at an airport with the suitcase and place it in the trunk of a taxi. The taxi departed but was stopped after several blocks, and the officers searched the suitcase at the scene without a warrant. The Court rejected the State's argument that the search was controlled by *Carroll*, noting that police had probable cause to seize the suitcase before it was placed in the taxi and did not have probable cause to search the vehicle itself. As in *Chadwick*, the Court affirmed a person's expectation of privacy in personal luggage, a privacy interest not diminished by its presence in an automobile. 442 U.S. at 764-65.

Currently, the lawful scope of searches under the automobile exception is primarily the product of two cases, *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991). In *Ross*, police developed probable cause to believe Ross' car contained narcotics which Ross was selling out of the trunk. After locating Ross driving his car on a city street, police performed a stop and searched the car without a warrant. Inside the trunk, they found heroin and a leather pouch containing cash. The question presented was the scope of a warrantless auto search authorized by *Carroll*:

> In this case, we consider the extent to which police officers – who have legitimately stopped an automobile and have probable cause to believe contraband is concealed somewhere within it – may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view.

Ross, 456 U.S. at 800.

The Court reasoned that the answer must be consistent with *Carroll*, emphasizing that the *Carroll* decision "was based on the Court's appraisal of practical considerations viewed in the perspective of history." 456 U.S. at 820. In considering the lawful scope of a search under the automobile exception, the Court acknowledged the argument that perhaps the vehicle itself could be thoroughly searched, with all packages and containers found inside submitted later to a magistrate for a warrant. This approach was rejected, however, because practical considerations in locating the contraband demand that both the car and its contents be held until the entire search is completed, and because a delayed search of the containers "would actually exacerbate the intrusion on privacy interests." 456 U.S. at 822, n. 28. Furthermore, the Court had already upheld warrantless searches of containers found during lawful searches of automobiles in *Husty v. United States*, 282 U.S. 694 (1931) (search of "whiskey bags" that could have contained other goods), and *Scher v. United States*, 305 U.S. 251 (1938) (packages of unstamped liquor wrapped in brown paper and tied with twine). The fact that no argument was even made in those cases that a warrant was needed to open the containers indicated to the Court that the bench and bar understood *Carroll* to permit such a search.

Reasoning that the practical consequences and historical perspective of *Carroll* would be nullified by a contrary rule, the Court concluded that the permissible scope of a warrantless search of an automobile includes the containers and packages found inside the vehicle:

> We hold that the scope of the warrantless search authorized by that [automobile] exception is no

> broader and no narrower than a magistrate could legitimately authorize by warrant. *If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.* (emphasis added.)

Ross, 456 U.S. at 825.

The Court also held that "[t]his rule applies equally to all containers," 456 U.S. at 822, affirming what had been stated earlier in *Robbins v. California*, 453 U.S. 420 (1981) (plurality opinion), that there was no proper constitutional distinction between "worthy" containers requiring a warrant to search, and "unworthy" containers that could be searched without a warrant. Likewise, there is no distinction in this context between privacy interests in the car itself and privacy interests in the contents of the car. All the privacy interests involved must yield to the authority of a search based on probable cause, the same as if a warrant had issued. 456 U.S. at 823.

Having defined the scope of a warrantless search under the automobile exception, the Court revisited the holdings of *Chadwick* and *Sanders* in *California v. Acevedo*, 500 U.S. 565 (1991). In *Acevedo*, police were keeping a certain apartment under surveillance because they knew a Federal Express package containing marijuana had just arrived there. A short time later, Acevedo came to the apartment, stayed a few minutes and then left with a brown paper sack which officers had probable cause to believe contained a portion of the marijuana shipped in the Federal Express package. Police stopped Acevedo as he drove away, opened the trunk and then opened the paper sack which contained marijuana. Since police only

had probable cause to search the paper bag and not the car, the case seemed to be controlled by *Chadwick*, not *Ross*, making the warrantless search of the bag unlawful. The precise question before the Court was "whether the Fourth Amendment requires the police to obtain a warrant to open the sack in a movable vehicle simply because they lack probable cause to search the entire car." 500 U.S. at 573.

The Court considered the confusion created by the dual regimes governing automobile searches that uncover containers; one rule allowing the container to be opened without a warrant, the other rule requiring a warrant. After noting that *Ross* eliminated privacy distinctions between cars and the containers they hold, and that containers found after either a general search of the car or a limited search for the container are equally easy for the police to store and the suspect to hide, the Court concluded that there is

> no principled distinction in terms of either the privacy expectation or the exigent circumstances between the paper bag found by the police in Ross and the paper bag found by the police here. Furthermore, by attempting to distinguish between a container for which the police are specifically searching and a container which they come across in a car, we have provided only minimal protection for privacy and have impeded effective law enforcement.

Acevedo, 500 U.S. at 574.

Deciding that "it is better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant

requirement for closed containers set forth in Sanders", 500 U.S. at 579, the Court held:

> We therefore interpret Carroll as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.

Acevedo, 500 U.S. at 580. In so holding, the Court maintained the narrow principle that probable cause limited to a particular container in a car does not justify a search of the entire vehicle. *Id.*

The Wyoming Supreme Court gave only cursory attention to the fact that this case involves an automobile search. It failed to recognize that an automobile passenger has a lesser expectation of privacy than a visitor to fixed premises, and likewise, the passenger's personal effects enjoy a reduced measure of freedom from governmental intrusion. Under the automobile exception, as long as the personal effects are found within the car and may hold the object of the search, *Ross* allows them to be searched by virtue of their presence in the car. *Ross* made no suggestion that once probable cause to search a vehicle is established, only portions of the vehicle or some of the containers therein may be searched. Quite to the contrary, *Ross* established a comprehensive rule to govern all situations. Furthermore, the fact that Ms. Houghton was not personally suspected of criminal activity when the search began does not place her property beyond the limits of an otherwise lawful search. *Zurcher v. Stanford Daily*, 436 U.S. 547, 559-60 (1978).

The Wyoming court's adoption of a single rule to govern certain aspects of both premises and automobile searches appears unprecedented. As this Court has made clear, the search of an automobile moving down a highway is constitutionally distinguishable from the search of fixed premises. The inherent mobility of automobiles creates exigent circumstances, *Chambers v. Maroney*, 399 U.S. 42, 50-51 (1970), and the pervasive governmental regulation of vehicles traveling on the highways creates a lesser expectation of privacy in the vehicle's contents. *California v. Carney*, 471 U.S. 386, 392 (1985).

Other courts that have considered this issue have not resorted to legal principles governing fixed premises, but have correctly recognized that *Ross* controls. In *People v. McMillon*, 892 P.2d 879 (Colo. 1995), a case remarkably similar to this one, a police officer lawfully stopped a vehicle for a traffic offense. After determining the driver's identity, the officer arrested him on an outstanding warrant related to drugs. He then directed the passenger, McMillon, to step out of the vehicle. She did so, leaving her closed purse behind on the seat. The officer then observed a syringe in plain view inside the car. This observation, together with the driver's drug history and denial that anyone was diabetic, prompted a search of the car's interior. The officer searched McMillon's purse and found cocaine.

The Colorado Supreme Court ruled that the officer had probable cause to perform a general search of the car for contraband, and that neither *Ross* nor *Acevedo* required a separate probable cause determination for the passenger's purse. The search of the purse was proper irrespective of whether the officer knew or should have

known that it belonged to McMillon. As an alternative ground for sustaining the search, the court held that it was a proper search incident to arrest under *New York v. Belton*, 453 U.S. 454 (1981), even though the purse belonged to a passenger who was not the subject of the arrest. The same result was reached by the court in *People v. Moore*, 900 P.2d 66 (Colo. 1995), where, after a traffic stop during which the officer developed probable cause to search the car generally for drugs, it was held that the officer could properly search a passenger's wallet found under a seat.

Similar applications of *Ross* to the search of a passenger's personal effects, after developing probable cause to search the vehicle generally, can readily be found. *See, e.g., State v. Fix*, 730 P.2d 601, 603-04 (Or.App. 1986) (search of passenger's purse upheld when there was probable cause to believe truck held evidence of an earlier crime, citing *State v. Brown*, 721 P.2d 1357 (Or. 1986), and *State v. Bennett*, 721 P.2d 1375 (Or. 1986)); *United States v. Crotinger*, 928 F.2d 203, 205-06 (6th Cir. 1991) (automobile exception permitted warrantless probable cause search of passenger's suitcases in trunk); *United States v. Critton*, 43 F.3d 1089, 1094-95 (6th Cir.), *cert. denied*, 514 U.S. 1121 (1995) (even if passenger had requisite expectation of privacy in blue bag, probable cause to search vehicle extended to the bag).

It does not require extended analysis to realize, as this Court said in *Ross*, 456 U.S. at 820, "the practical consequences of the Carroll decision would be largely nullified" if the permissible scope of a warrantless search of an automobile did not include all of the containers found inside, but only the ones belonging to occupants

for whom probable cause has specifically been developed. The Wyoming Supreme Court's rule amounts to a revival of *Chadwick*, *Sanders* and *Robbins*, in the sense that once again the car itself may be searched without a warrant on probable cause while some of its containers may be searched, if at all, only with a warrant.

The illogic in the court's rule becomes even more apparent when one compares the scope of a lawful search of residential premises to the scope of a lawful car search under the automobile exception. As the Court noted in *Ross*, 456 U.S. at 820-21, the search of the home extends to the entire area covered by the warrant. Executing the warrant allows separate acts of entry and the opening of rooms, closets, drawers and containers as long as the object of the search may be found in those locations. Some of these locations could easily be the rooms, closets and drawers of "nonsuspect" occupants of the home; i.e., occupants regarding whom the police have not derived the probable cause used to secure the warrant. Although nonsuspects, their privacy interests give way to the authority of the warrant and their personal belongings may be searched if capable of holding the object of the search. Under the Wyoming Supreme Court's rule, the scope of an automobile search will not reach the personal belongings of nonsuspect occupants of a car, thus bestowing a superior privacy interest on them compared to that enjoyed by nonsuspect occupants of a home. This not only runs contrary to the reduced expectation of privacy supposedly applicable to an automobile and its contents, it constricts the scope of a lawful car search more severely than that of a lawful premises search.

It is apparent that the Wyoming Supreme Court erred in its understanding of the Fourth Amendment's automobile exception. Given the existence of probable cause to search the vehicle generally, an *additional* measure of probable cause should not be required to search a particular container that could hold the object of the search. The Fourth Amendment does not require such calculations, and the rule of *Ross* and *Acevedo* contains no such qualifications. As this Court has made clear, probable cause to search a vehicle extends to "every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825.

ARGUMENT II

As a general principle, a warrant to search a container covers any smaller containers that may be found inside it, without the need for an additional warrant or probable cause specific to the smaller container.

On appeal to the Wyoming Supreme Court, both Ms. Houghton and the court acknowledged that there was probable cause to conduct a general search of the automobile for controlled substances. (Pet. App. 5-6). It was also apparent to the court that Ms. Houghton's purse was capable of concealing controlled substances. (*Id.* at 8). The court further acknowledged that the scope of a warrantless automobile search under *Ross* is identical to the scope of a search that would be authorized by a warrant. Nevertheless, the court concluded that this generalized probable cause did not encompass Ms. Houghton's purse on the back seat; the officer needed probable cause specific to the purse in order to search it. According to the court,

even if a warrant had issued to search the car, the purse would not have been within the scope of the warrant.

The Wyoming Supreme Court erred in concluding that a warrant to search the car for drugs would not have permitted the search of the purse. This conclusion was reached only by giving Ms. Houghton the status of a visitor to fixed premises. If a warrant had issued to search the car, it would have allowed a search of the purse and no additional probable cause specific to the purse would have been needed, nor would a second search warrant have been required. Because the purse was capable of concealing the object of the search (drugs), it could have been opened under the authority of a warrant.

As a general principle, the scope of a warrant authorizing the search of a container, whether it is a car or a building or some other object, authorizes the search of any smaller containers found inside it, as long as the smaller container is capable of holding the object of the search.[5] No additional warrant or extra measure of probable cause is needed to search the smaller container. This principle is consistent with the language of the Fourth Amendment, which only requires a description of the place to be searched, not the receptacles found therein.

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[5] In *Ross*, 456 U.S. at 820-21, the Court noted that a warrant will permit separate acts of opening at the place to be searched although such acts are not specifically authorized in the warrant: "A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside."

In *United States v. Kralik*, 611 F.2d 343 (10th Cir. 1979), *cert. denied*, 445 U.S. 953 (1980), a warrant was obtained to search a vehicle for weapons, including a sawed off shotgun belonging to Kralik. At the time the car was stopped and seized, it was being operated by another person and Kralik was a passenger. A search of Kralik's suitcase in the trunk revealed the shotgun. Relying on *Ybarra v. Illinois*, 444 U.S. 85 (1979), Kralik contended that the search warrant did not extend to his suitcase and that a second warrant was needed to search it.

The court of appeals disagreed, reasoning that when a search warrant covers the primary container (the car), additional warrants are not required for the smaller containers inside. Considering the search warrant at issue in *Ybarra*, which did not extend to patrons on the tavern premises, the court said, "We do not equate the search of a person unnamed in a warrant with the search of a described automobile for a specified item." 611 F.2d at 345. *Accord, United States v. DeSimone*, 660 F.2d 532, 542 (5th Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982) (valid warrant to search one person's car permitted search of another person's suitcase found therein without need for an additional warrant); *United States v. Grandstaff*, 813 F.2d 1353, 1358-59 (9th Cir.), *cert. denied*, 484 U.S. 837 (1987) (warrant to search vehicle authorizes search of any luggage therein that might contain contraband listed in warrant); *United States v. Calarco*, 668 F.2d 920, 921 (6th Cir. 1982) (warrant to search car authorized search of objects found within car); *United States v. Finch*, 679 F.2d 1083, 1085 (4th Cir. 1982) (warrant to search truck authorized opening of opaquely wrapped bales in truck without need for a second warrant); *United States v. Callison*,

577 F.2d 53, 55 (8th Cir.), *cert. denied*, 439 U.S. 873 (1978) (warrant to search car authorized search of suitcase found therein without need for a second warrant).

Application of this principle to premises searches produces the same result. *See, e.g., United States v. Morris*, 647 F.2d 568, 572-73 (5th Cir. 1981) (warrant to search residence allowed search of locked jewelry box found in residence without need for a second warrant); *People v. Press*, 633 P.2d 489, 492-93 (Colo.Ct.App. 1981) (warrant to search house permitted search of locked safe found in house without need for a second warrant).

Given the equivalence between the scope of a warrantless automobile search based on probable cause and the scope of a search authorized by warrant, these cases demonstrate that Ms. Houghton's purse fell within the scope of the search at issue here. No Fourth Amendment violation occurred.

ARGUMENT III

If this search had been conducted incident to arrest, not requiring probable cause to search, it would have been lawful. It is peculiar to hold the search unlawful when, as here, it is based on probable cause.

A curious anomaly arises in this case from the fact that the search was based on probable cause and was not performed incident to the arrest of the driver, David Young. If he had been lawfully arrested prior to initiation of the search involved here, the Wyoming Supreme Court would have been constrained to uphold the search of Ms.

Houghton's purse as incident to Young's arrest. No probable cause would have been required to search the passenger compartment or the purse. And yet, because this search was based on probable cause to search the car generally, it is struck down.

In *New York v. Belton*, 453 U.S. 454 (1981), a car containing four men was stopped for speeding by an officer. While checking the driver's license and car registration, the officer smelled burnt marijuana and observed an envelope on the floor he reasonably suspected of containing marijuana. All four men were arrested. After searching the men, the officer searched the passenger compartment of the car. On the back seat he found a jacket belonging to Belton and searched it, finding cocaine. The question presented to the Court was the proper scope of a car search incident to the arrest of the occupants. This involved application of the search incident to arrest doctrine of *Chimel v. California*, 395 U.S. 752 (1969), to automobiles. This Court held that when an officer makes a lawful custodial arrest of a motor vehicle occupant, he may, contemporaneously with the arrest, search the passenger compartment of the vehicle and open *any* containers found therein. Such a search is not justified by the existence of probable cause to search; rather, it is the custodial arrest based on probable cause that justifies the intrusion. 453 U.S. at 460-61.

This straightforward rule has been applied numerous times to allow the search of a nonarrested passenger's personal effects found inside a vehicle. *See, e.g., State v. Moore*, 619 So.2d 376, 377 (Fla.Dist.Ct.App. 1993) (arrest of driver permitted search incident to arrest of passenger's closed purse on floorboard); *State v. Loftis*, 568

So.2d 121, 122 (Fla.Dist.Ct.App. 1990) (arrest of driver permitted search incident to arrest of passenger's open purse on floorboard); *People v. Mitchell*, 42 Cal.Rptr.2d 537, 539-40 (Cal.Dist.Ct.App. 1995), *cert. denied*, 517 U.S. 1192 (1996) (driver's arrest permitted search incident to arrest of passenger's purse on floorboard, citing *People v. Prance*, 277 Cal.Rptr. 567 (Cal.Dist.Ct.App. 1991)); *State v. Parker*, 944 P.2d 1081, 1084-85 (Wash.Ct.App. 1997), *review granted*, 958 P.2d 315 (Wash. May 6, 1998) (No. 66147-2) (driver's arrest permitted search incident to arrest of passenger's purse voluntarily left on seat; *cf. State v. Seitz*, 941 P.2d 5 (Wash.Ct.App. 1997) (driver's arrest does not justify search of passenger's purse where purse is not in car at time of search but is on passenger's person outside of car)); *People v. Bullock*, 485 N.W.2d 866, 869-70 (Mich. 1992) (arrest of *passenger* permitted search incident to arrest of *driver's* purse left in car); *State v. Treutelaar*, No. 96-3249-CR, 1997 WL 213040, 211 Wis.2d 889 (Wis.Ct.App. May 1, 1997) (arrest of driver permitted search incident to arrest of passenger's manila envelope left on floorboard).

The Wyoming Supreme Court ruled that the personal belongings of nonsuspect occupants of an automobile may not be searched even where an officer has probable cause to search the vehicle generally. If left to stand, this ruling will produce an anomalous disparity between the scope of a *Carroll* search based on probable cause and the scope of a *Belton* search of a vehicle interior incident to the arrest of an occupant. In the first situation, where there is probable cause to search generally, a container in the car that could hold the object of the search is not within the search's scope, but in the second situation, the same container in the car may be opened although the

officer lacks probable cause to search at all. This is the kind of anomaly rightfully condemned in *Acevedo*, 500 U.S. at 568. To be consistent under the Fourth Amendment, both types of searches should allow the opening of the purse involved here.

ARGUMENT IV

The Wyoming Supreme Court's holding represents a departure from this Court's insistence on a single, familiar Fourth Amendment standard, readily applicable by police in their day-to-day law enforcement activities.

From the perspective of a police officer in the field, trying to determine the proper scope of a vehicle search under the rule announced by the Wyoming Supreme Court will present serious difficulties. Where an officer has probable cause to search a vehicle containing several occupants, he must first make a series of subtle Fourth Amendment calculations that will determine which containers he may search and which containers he may not search. Trial courts presented with a motion to suppress will fare no better.

At least since the days of *Carroll*, this Court has recognized the difference between searches of lawfully stopped vehicles and premises searches in terms of the constitutional protection afforded each. Premises have always enjoyed more Fourth Amendment protection from warrantless searches than moving vehicles. *See, e.g., Agnello v. United States*, 269 U.S. 20, 33 (1925) ("Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are

held unlawful notwithstanding facts unquestionably showing probable cause.") It is not the case that a passenger lacks an expectation of privacy in his personal effects while traveling on a highway. Rather, it is the lawful stop of the vehicle followed by the development of probable cause to search it that justifies the infringement of the passenger's privacy interest. Just as passengers must tolerate the stop of an automobile and the attendant delay occasioned by the actions of the driver, their belongings are subject to search as a consequence of being in a vehicle for which there is probable cause to search. Once probable cause is established to search the car generally, it is difficult to understand how some containers can be "more private" than others, to the point of defeating the probable cause.

If the Wyoming Supreme Court had given closer consideration to the respective situations of automobile passengers and premises visitors, it might not have treated them alike under the Fourth Amendment. When an officer submits his case to a magistrate in order to obtain a premises search warrant, the State's proof and the magistrate's assessment of probable cause occur without any regard to the chance that a visitor may be on the premises when the warrant is eventually executed. Consequently, the probable cause to search never attaches to the visitor or his belongings. In an automobile search, however, the passenger and his belongings are present at the time and place that probable cause to search is established. The passenger is part of the factual setting giving rise to the probable cause.

Logically, treating the personal belongings of passengers in a car the same as those of visitors or guests to

fixed premises does not make sense and, as a practical matter, it is unworkable. One simply does not "visit" mobile vehicles traveling on the streets and highways. People inside a moving vehicle obviously have the common purpose of getting from one place to another together by using the public thoroughfares. Guests on premises, however, may have any of a myriad of reasons for being on the premises, and they may come and go, be there or not be there, as they choose.

As this case illustrates, Ms. Houghton was not "visiting" the car she jointly occupied with David Young. Whatever else their reasons may have been that night for being together, their joint presence in the car demonstrated a common purpose of using the car to get from one place to another over the public roads. If Ms. Houghton had fortuitously been driving the car at the moment it was stopped instead of Young, who would have been the "guest/passenger" and who would have been the "resident" of the premises? Is the driver always in possession of the car to the exclusion of the passengers? If the registered owner is always the "resident" of the vehicle, what if he is not present in the car when it is stopped? Is everyone in the car a mere visitor then? What if Young was alone in the car but Ms. Houghton's purse was there? Could police have searched it then? What if the syringe in this case had been seen in Ms. Houghton's shirt pocket and not Young's? Would that have created probable cause to search the car or only Ms. Houghton and her belongings? Can probable cause to search the car be developed only through the driver?

The rule announced by the court will require officers to make difficult judgments concerning which containers

may be searched. The occupants of a vehicle apparently must be divided into at least two groups – suspects and nonsuspects. Personal effects must then be allocated among the occupants to determine which ones may be searched. Police will have to develop facts through questioning the occupants, a process not likely to produce truthful information or, perhaps, any information at all. Police will have to proceed at their peril.[6]

Unfortunately, this rule will produce the very sort of mischief this Court has strenuously sought to prevent in the area of search and seizure. Quoting in part from LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. Ct. Rev. 127, this Court warned in *Belton*, 453 U.S. at 458:

> "Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of

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[6] It is not merely the rights of suspects that are involved. Police exposure to civil liability for guessing wrong about the extent of a person's constitutional rights is a matter worthy of this Court's consideration. This Court summarized it best in *Belton*, 453 U.S. at 459-60: "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority."

> subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.' " *Id.*, at 141.

> In short, "[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-214.

The holding of the Wyoming Supreme Court revives the confusion that marked the state of the automobile exception in years past. To eliminate the confusion, this Court should make it plain that there is indeed one rule, the true rule, for *all* searches under the automobile exception. That rule is the one defined by *Carroll*, *Ross*, and *Acevedo*.

CONCLUSION

The Wyoming Supreme Court has produced a rule that violates the plain language of this Court's pronouncements concerning the automobile exception. This rule represents a regression to the former disarray in the law that was so troublesome to courts and law enforcement. This Court should make clear that probable cause to search a vehicle under the automobile exception permits the search of all containers inside the vehicle that could

hold the object of the search, including containers belonging to occupants for whom police do not have individualized probable cause.

The judgment of the Wyoming Supreme Court should be reversed on the foregoing basis, and the case remanded for the court's consideration of the remaining issues.

Respectfully submitted,

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